UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

TONI J. GUMP, : CASE NO. 5:05-cv-1849

Plaintiff, : JUDGE JAMES S. GWIN

vs. : ORDER & OPINION

[Resolving Doc. No. 65]

SUMMIT COUNTY SHERIFF, et al.,

:

Defendants.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On June 23, 2006, Defendant Cuyahoga Falls filed a motion for attorney fees and costs pursuant to 42 U.S.C. § 1988. This matter was referred to United States Magistrate Judge George J. Limbert on June 26, 2006, pursuant to Local Rule 72.1. [Doc. 66.] On August 2, 2006, Magistrate Judge Limbert issued a Report and Recommendation that this Court deny the Defendant's motion for attorney fees and costs because (1) the Defendant was not a "prevailing party" for purposes of an award of fees and costs under § 1988(b) after the Plaintiff's dismissal of her lawsuit with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and (2) the Plaintiff's lawsuit was not necessarily frivolous, unreasonable, or without foundation and was not a truly egregious case of misconduct warranting attorney fees and costs for the Defendant. [Doc. 68.] Neither party objects to the Magistrate Judge's recommendation.

The Federal Magistrates Act requires a district court to conduct a de novo review only of those portions of a Report and Recommendation to which the parties have made an objection. 28

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U.S.C. § 636(b)(1). Parties must file any objections to a Report and Recommendation within ten

days of service. Failure to object within that time waives a party's right to appeal the magistrate

judge's recommendation. FED. R. CIV. P. 72(a); see Thomas v. Arn, 474 U.S. 140, 145 (1985);

United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Absent objection, a district court may adopt

the magistrate's report without review. Thomas, 474 U.S. at 149. Moreover, having conducted its

own review of the parties' briefs on the issue, this Court agrees with the conclusions of the

Magistrate Judge.

Accordingly, the Court adopts in whole Magistrate Judge Limbert's findings of fact and

conclusions of law and incorporates them fully herein by reference. The Court thus denies the

Defendant's motion for attorney fees and costs

IT IS SO ORDERED.

Dated: November 19, 2006

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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